

---

**Introduced by Senator Maldonado**

February 16, 2005

---

An act to amend Section 201 of, and to add Section 227.4 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 285, as introduced, Maldonado. Employee wages.

Existing law provides that any earned and unpaid wages are due and payable by an employer immediately at the time an employee is discharged, and that, where an employer lays off a group of employees by reason of the termination of seasonal employment specified, such payment is deemed to have been made immediately when such wages are paid within a reasonable time as specified, not to exceed 72 hours, and in the manner indicated.

This bill would provide that, where an employer discharges instead any employee, payment is deemed to have been made immediately when such wages are paid within the time and manner indicated, and further that the date of mailing shall constitute the date of payment for the purposes of the requirement to provide payment within 72 hours.

Existing law provides for the payment, as specified, of vested vacation time upon termination of employment.

This bill would allow employees, as specified, to request and receive partial days of vacation from vested vacation credits.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 201 of the Labor Code is amended to  
2 read:

1 201. (a) If an employer discharges an employee, the wages  
2 earned and unpaid at the time of discharge are due and payable  
3 immediately. An employer who ~~lays off a group of employees by~~  
4 ~~reason of the termination of seasonal employment in the curing,~~  
5 ~~canning, or drying of any variety of perishable fruit, fish or~~  
6 ~~vegetables,~~ *discharges an employee* shall be deemed to have  
7 made immediate payment when the wages of ~~said employees~~ are  
8 paid within a reasonable time as necessary for computation and  
9 payment thereof; provided, however, that the reasonable time  
10 shall not exceed 72 hours, and further provided that payment  
11 shall be made by mail to any employee who so requests and  
12 designates a mailing address therefor. *The date of the mailing*  
13 *shall constitute the date of payment for the purposes of the*  
14 *requirement to provide payment within 72 hours.*

15 (b) Notwithstanding any other provision of law, the state  
16 employer shall be deemed to have made an immediate payment  
17 of wages under this section for any unused or accumulated  
18 vacation, annual leave, holiday leave, or time off to which the  
19 employee is entitled by reason of previous overtime work where  
20 compensating time off was given by the appointing power,  
21 provided, at least five workdays prior to his or her final day of  
22 employment, the employee submits a written election to his or  
23 her appointing power authorizing the state employer to tender  
24 payment for any or all leave to be contributed on a pretax basis to  
25 the employee's account in a state-sponsored supplemental  
26 retirement plan as described under Sections 401(k), 403(b), or  
27 457 of the Internal Revenue Code provided the plan allows those  
28 contributions. The contribution shall be tendered for payment to  
29 the employee's 401(k), 403(b), or 457 plan account no later than  
30 45 days after the employee's discharge from employment.  
31 Nothing in this section is intended to authorize contributions in  
32 excess of the annual deferral limits imposed under federal and  
33 state law or the provisions of the supplemental retirement plan  
34 itself.

35 (c) Notwithstanding any other provision of law, when the state  
36 employer discharges an employee, the employee may, at least  
37 five workdays prior to his or her final day of employment, submit  
38 a written election to his or her appointing power authorizing the  
39 state employer to defer into the next calendar year payment of  
40 any or all of the employee's unused or accumulated vacation,

1 annual leave, holiday leave, or time off to which the employee is  
2 entitled by reason of previous overtime work where  
3 compensating time off was given by the appointing power. To  
4 qualify for the deferral of payment under this section, only that  
5 portion of leave that extends past the November pay period for  
6 state employees shall be deferred into the next calendar year. An  
7 employee electing to defer payment into the next calendar year  
8 under this section may do any of the following:

9 (1) Contribute the entire payment to his or her 401(k), 403(b),  
10 or 457 plan account.

11 (2) Contribute any portion of the deferred payment to his or  
12 her 401(k), 403(b), or 457 plan account and receive cash  
13 payment for the remaining noncontributed unused leave.

14 (3) Receive a lump-sum payment for all of the deferred unused  
15 leave as described above.

16 Payments shall be tendered under this section no later than  
17 February 1 in the year following the employee's last day of  
18 employment. Nothing in this section is intended to authorize  
19 contributions in excess of the annual deferral limits imposed  
20 under federal and state law or the provisions of the supplemental  
21 retirement plan itself.

22 SEC. 2. Section 227.4 is added to the Labor Code, to read:

23 227.4. Notwithstanding any other provisions of law,  
24 employees qualifying for the exemption contained in subdivision  
25 (a) of Section 515 may request and receive partial days of  
26 vacation from vested vacation credits.